

**UNITED STATES GOVERNMENT  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
REGION 13**

**Individual Advocacy Group, Inc.**

**Employer**

**and**

**Case 13-RC-21518**

**American Federation of State, County and Municipal Employees Council 31, AFL-CIO**

**Petitioner**

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing on this petition was held before a hearing officer of the National Labor Relations Board, herein referred to as the Board, to determine whether it is appropriate to conduct an election in light of the issues raised by the parties.<sup>1</sup>

**I. Issues**

The instant petition raises issues of both scope and composition. American Federation of State, County and Municipal Employees Council 31, AFL-CIO (herein “Petitioner”) asserts that the scope of the petitioned-for unit should be limited to three of Individual Advocacy Group, Inc.’s (herein “Employer” or “IAG”) four geographical Regions. Alternatively, the Petitioner asserts that each one of the four Regions constitutes a presumptively appropriate unit and that an election in each separate unit should be directed<sup>2</sup>. In addition, the Petitioner asserts that the

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<sup>1</sup> Upon the entire record in this proceeding, the undersigned finds:

- a. The hearing officer’s rulings made at the hearing are free from prejudicial error and are hereby affirmed.
- b. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.
- c. The labor organization involved claims to represent certain employees of the Employer.
- d. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

<sup>2</sup> I note that the Petitioner did not proffer this alternative theory of separate individual Regions as appropriate units at hearing. Rather, the Petitioner first raised this theory in its post-hearing brief.

composition of the unit should exclude the Direct Service Persons who work in IAG's Home-Based Program<sup>3</sup>, as well as the Clinical Mentors who work in IAG's Post-Adoption Program.

The Employer contends that it is wholly inappropriate to exclude the fourth geographical Region and argues that a multi-location unit including all four geographic Regions properly defines the scope of the instant unit. Furthermore, the Employer asserts that the Direct Service Persons working in the Home-Based Program and the Clinical Mentors working in the Post-Adoption Program share a community of interest with the other employees in the petitioned-for unit such that they must be included in an appropriate unit.

Thus, the issues to be decided are the following:

1. Whether the appropriate scope of the unit should include the Employer's West Region? If not, whether each individual Region constitutes an appropriate unit?
2. Whether the composition of an appropriate unit should include the Direct Service Persons working in the Employer's Home-Based Program?
3. Whether the composition of an appropriate unit should include the Clinical Mentors working in the Employer's Post-Adoption Program?

## **II. Decision**

Based on the entire record of this proceeding and for the reasons set forth below, I find that three out of four Regions do not constitute an appropriate unit, but that each Region separately constitutes an appropriate unit. Based on the appropriate scope of the unit, I find that the Direct Service Persons working in the Employer's Home-Based Program and the Clinical Mentors working in the Employer's Post-Adoption Program do not share a community of interest with the petitioned-for employees in any one of the separate regional units. Therefore, both of these classifications are excluded from the units directed herein.

Accordingly, IT IS HEREBY ORDERED that an election be conducted under the direction of the Regional Director for Region 13 in the following four bargaining units:

All full-time and regular part-time Direct Service Persons, House Managers, Developmental Trainers, Developmental Instructors, DT Transporters employed by the Employer out of its North Region in the Community Integrated Living Arrangement Program ("CILA"), Transitional Living Program ("TLP"), and/or Developmental Training Program ("DT"); but excluding the Executive Director, Executive Director Assistant, Chief Operating Officer, Director of In-Home Services, Director of TBI Program, Director of Quality Assurance and Advocacy, DT Director, Director of Asset Management, Human Resources Director, Office Manager, Director of Business Development, Director of Business Operations, Regional Directors, Assistant Regional Directors, Directors of Behavioral Health Services, Therapists,

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<sup>3</sup> I note that the Petitioner did not specifically include or exclude the HBS Program DSPs in its petition, at hearing, or in its post-hearing brief. The Employer, on the other hand, argued on brief that these employees must be included in a minimally appropriate unit.

Qualified Mental Retardation Professionals, Crisis Prevention Managers, DT Coordinators, Community Integration Specialists, Nurses, TBI Case Managers, Field Coordinators, Direct Service Persons in the Home-Based Services Program, Clinical Mentors in the Post-Adoption Program, maintenance and janitorial employees, managerial employees, confidential employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

All full-time and regular part-time Direct Service Persons, House Managers, Developmental Trainers, Developmental Instructors, and DT Transporters employed by the Employer out of its South Region in the Community Integrated Living Arrangement Program (“CILA”), Transitional Living Program (“TLP”), and/or Developmental Training Program (“DT”); but excluding the Executive Director, Executive Director Assistant, Chief Operating Officer, Director of In-Home Services, Director of TBI Program, Director of Quality Assurance and Advocacy, DT Director, Director of Asset Management, Human Resources Director, Office Manager, Director of Business Development, Director of Business Operations, Regional Directors, Assistant Regional Directors, Directors of Behavioral Health Services, Therapists, Qualified Mental Retardation Professionals, Crisis Prevention Managers, DT Coordinators, Community Integration Specialists, Nurses, TBI Case Managers, Field Coordinators, Direct Service Persons in the Home-Based Services Program, Clinical Mentors in the Post-Adoption Program, maintenance and janitorial employees, managerial employees, confidential employees, managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

All full-time and regular part-time Direct Service Persons, House Managers, Developmental Trainers, Developmental Instructors, and DT Transporters employed by the Employer out of its Chicago South Central Region in the Community Integrated Living Arrangement Program (“CILA”), Transitional Living Program (“TLP”), and/or Developmental Training Program (“DT”); but excluding the Executive Director, Executive Director Assistant, Chief Operating Officer, Director of In-Home Services, Director of TBI Program, Director of Quality Assurance and Advocacy, DT Director, Director of Asset Management, Human Resources Director, Office Manager, Director of Business Development, Director of Business Operations, Regional Directors, Assistant Regional Directors, Directors of Behavioral Health Services, Therapists, Qualified Mental Retardation Professionals, Crisis Prevention Managers, DT Coordinators, Community Integration Specialists, Nurses, TBI Case Managers, Field Coordinators, Direct Service Persons in the Home-Based Services Program, Clinical Mentors in the Post-Adoption Program, maintenance and janitorial employees, managerial employees, confidential employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

All full-time and regular part-time Direct Service Persons, House Managers, Developmental Trainers, Developmental Instructors, and DT Transporters employed by the Employer out of its West Region in the Community Integrated Living Arrangement Program (“CILA”), Transitional Living Program (“TLP”), and/or Developmental Training Program (“DT”); but excluding the Executive Director, Executive Director Assistant, Chief Operating Officer, Director of In-Home Services, Director of TBI Program, Director of Quality Assurance and Advocacy, DT Director, Director of Asset Management, Human Resources Director, Office Manager, Director of Business Development, Director of Business Operations, Regional Directors, Assistant Regional

Directors, Directors of Behavioral Health Services, Therapists, Qualified Mental Retardation Professionals, Crisis Prevention Managers, DT Coordinators, Community Integration Specialists, Nurses, TBI Case Managers, Field Coordinators, Direct Service Persons in the Home-Based Services Program, Clinical Mentors in the Post-Adoption Program, maintenance and janitorial employees confidential employees, managerial employees, office clerical employees and guards, professional employees and supervisors as defined in the Act.

### **III. Statement of Facts**

#### **A. IAG's Programs and Employee Classifications**

IAG is a not-for-profit organization that provides services to individuals with a range of disabilities, from developmental disabilities, emotional disorders, mental illness and brain injury. Most of IAG's clients are referrals from the State of Illinois Department of Human Services ("DHS") and the State of Illinois Department of Children and Family Services ("DCFS"). The Employer operates six programs to provide a full array of quality, outcome-based, functional and age-appropriate person and community centered services and support for its clients in the State of Illinois.

The Employer's first and largest program is its Community Integrated Living Arrangement ("CILA"). In the CILA Program, developmentally disabled adults rent homes on their own, and the Employer then provides support for these individuals to live in the community. The Employer provides the following services to the individuals in the CILA Program: completion of daily tasks such as dressing; preparation of daily food menus; assistance with grocery and other types of shopping; creating budgets and maintaining bank accounts; managing the cleanliness of their home; and fostering social interactions with others in the home and community. The Employer's CILA Program is funded by DHS.

The CILA Program is staffed throughout the Employer's four Regions by Direct Service Persons ("DSPs") and House Managers. The DSPs provide training services as described above for the clients residing in the CILA. House Managers are DSPs who provide these same training services for the clients residing in the CILA and who also set the clients' daily schedules. The CILA homes are staffed 24 hours per day, 7 days per week in 8-hour shifts. A minimum of one person (either a DSP or a House Manager) is staffed in each CILA per 8-hour shift. All hours are set by IAG. Generally, there is a House Manager assigned to each CILA house. In circumstances where there is only one client in a particular CILA, a House Manager may be responsible for two homes. Either the House Manager or one or more of the DSPs sleeps overnight with the clients in the CILA homes.

The second program is the Transitional Living Program ("TLP"). Through the TLP, the Employer provides support services to wards of the State of Illinois aged 18 through 21. These support services are the same as those provided in the CILA Program. The TLP assists young persons who have previously been in residential facilities, jails or psychiatric hospitals to be independent within the community. The Employer's TLP Program is funded by DCFS. In the same manner as in the above-described CILA Program, houses are rented and the TLP is staffed by House Managers and DSPs. All hours are set by IAG.

The third program is the Developmental Training Program (“DT Program”)<sup>4</sup>. Through the DT Program, IAG assists clients with vocational training and interpersonal skills. The Employer provides the following services to the individuals in the DT Program: provides assistance with developing job training skills and job placement; fosters workplace responsibility; encourages social interaction among peers; assists with development of daily living skills; and provides training for fiscal responsibility. Clients are taken from their homes to the Employer’s DT sites (which are either owned or rented by IAG) in the appropriate geographical Region in order to receive this vocational/interpersonal training. The Employer’s DT Program is funded by DHS.

The DT Program is staffed by Developmental Trainers, Developmental Instructors and DT Transporters.<sup>5</sup> The Developmental Trainers implement the general program services to assure the health and safety of the clients in the DT Program. The Developmental Instructors focus on specific skills training with the clients. The DT Transporters drive the clients in IAG vans to and from the home and the DT site. Clients generally participate in the DT Program Mondays through Fridays for 5 hours per day. All of the Developmental Trainers and Developmental Instructors are DSPs. The record evidence shows that it is not uncommon for a DSP to work for 5 hours one day at a DT site and then work for another 3 hours the same day at a CILA home. All hours are set by IAG.

The fourth program is the Post Adoption Program. Through this program, IAG provides clinical mentoring services to former wards of the State of Illinois adopted into families. The participants are developmentally disabled children who require transitional services into a new family setting. The Employer’s DT Program is funded by DCFS. The Post-Adoption Program is staffed throughout the Employer’s four Regions by Clinical Mentors. The Clinical Mentors work with the DCFS wards in their adopted family settings. Their hours are set by IAG, DCFS and the families. The Clinical Mentors travel from family to family to work with the DCFS wards.

The fifth program is the Traumatic Brain Injury Program (“TBI Program”). IAG provides case management services to persons who have sustained a brain injury and who live in their personal or family residences. The Employer’s TBI Program is funded by DHS. The TBI Program is staffed throughout the Employer’s four Regions by TBI Case Managers.<sup>6</sup>

The sixth program is the Home-Based Services Program (“HBS Program”). Through the HBS, the Employer provides support services to clients who are living with their families. These support services are the same as those enumerated above for the CILA Program. The HBS Program is staffed throughout the Employer’s four Regions by Field Coordinators<sup>7</sup> and DSPs.

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<sup>4</sup> In its petition, the Petitioner refers to the DT Program as the Day Training Program. The parties agreed on the record that these terms can be used interchangeably.

<sup>5</sup> Currently, there is no DT Program in IAG’s Chicago South Central Region. There are DT sites in IAG’s North, South and West Regions, as well as at IAG’s corporate office in Romeoville.

<sup>6</sup> Though the petitioner originally included these employees in its petitioned-for unit, the parties later stipulated at hearing that the TBI Case managers should be excluded from the unit.

<sup>7</sup> Though the petitioner originally included these employees in its petitioned-for unit, the parties later stipulated at hearing that the HBS Field Coordinators should be excluded from the unit.

The DSPs in the HBS Program perform the same functions in the family home-based setting as do the DSPs in the CILA homes. The HBS DSPs work typically 40-hour weeks, but their day-to-day hours may vary depending on the particular needs of the HBS clients and their families. The HBS DSPs travel from family home to family home throughout the Regions to provide their services. Their hours are set by IAG, DHS and the families.

## **B. IAG's Organizational Structure**

IAG maintains its corporate office in Romeoville, Illinois, and also maintains offices in each of its four Regions (Sandwich, Illinois, in the North Region; Kankakee, Illinois, in the South Region; Homewood, Illinois, in the Chicago South Central Region; and Moline, Illinois, in the West Region).

The North, South, and West Regions each offer CILA, TLP and DT Programs (utilizing DSPs, House Managers, Developmental Trainers, Developmental Instructors and DT Transporters). The Chicago South Central Region currently offers CILA and TLP Programs (utilizing DSPs and House Managers) and has in the past offered DT Programs (utilizing Developmental Trainers, Developmental Instructors and DT Transporters). Employees in these programs report directly to their geographic Regional Directors, who in turn report to Chief Operating Officer Dr. David Brooks.

The TBI, HBS and Post Adoption Programs are administered centrally through the Romeoville office, and the employees who staff these programs (such as DSPs and Clinical Mentors) travel from Region to Region throughout the State of Illinois to provide these program services to clients in their families' homes. The DSPs in the HBS Program report not to Regional Directors (since they travel from Region to Region) but instead to Field Coordinators, who in turn report directly to a Qualified Mental Health Professional and to COO Brooks. Similarly, the Clinical Mentors report not to Regional Directors (since they travel from Region to Region), but instead to the Director of Behavioral Health Services, who in turn reports directly to COO Brooks and who is based out of the Romeoville corporate office. The Director of Behavioral Health Services approves overtime for the Clinical Mentors.

IAG's operations are overseen from the Romeoville corporate office by its Executive Director/Chief Executive Officer, Dr. Charlene Bennett and by Dr. Brooks. All four Regions of IAG operate under the oversight of a single Board of Directors. In addition, the Employer's human resources function is centrally coordinated from the Romeoville office by its Director of Human Resources, Suzanne Hunter. Dr. Brooks testified at hearing that the terms and conditions of all IAG employees are set by himself and the Executive Director pursuant to guidelines from the appropriate State of Illinois agency (DHS for the adult-based programs and DCFS for the child-based programs). Many of IAG's operations and programs are centrally coordinated from its corporate office, such as: behavior management services (providing the licensed therapists who travel statewide to work with IAG's clients); vehicle services; janitorial services; quality assurance; risk management; and budget and fiscal oversight. Hunter has oversight for all employees' payroll, benefits, and time/attendance.

There is, however, a high degree of local autonomy in each Region. Each Region has its own Regional Director (although at the time of the instant hearing, the South and Chicago South

Central Regions shared the same Regional Director) and its own Human Resources Manager. Brooks testified that all Regional Directors report directly to him and to the Executive Director. Human Resources Director Hunter testified that the four Human Resources Managers report directly to her.

The evidence shows that, within each Region, the Regional Directors interview and hire the employees. The Regional Directors also make recommendations to the COO and CEO regarding new employees' hourly wages. Regarding suspension and termination, Hunter testified that she and the Regional Director or Human Resources Manager will have a conversation with Brooks and Bennett, who then make the suspension or termination decisions. Hunter then issues the suspension/termination herself, or directs the Regional Director or Human Resources Manager to carry it out. Less severe discipline is issued by each Regional Director or Human Resources Manager. In addition, Regional Directors approve overtime for their CILA, TLP and DT employees. If and when employees wish to transfer, whether from one classification to another or from one Region to another, the Regional Directors initiate the transfer, and it is approved centrally by Brooks, Bennett and Hunter in the corporate office.

All new hire documentation is maintained at the Romeoville corporate office, and Hunter performs new employee orientation for all classifications at the corporate office. Job openings are posted first within a Region, and then across the remaining Regions. Payroll is performed centrally in the corporate office every two weeks for all IAG employees. Further, personnel policies and procedures (including description of benefits, insurance, code of ethics, and the sexual harassment policy) apply to the employees across all four Regions. Employees who wish to see their personnel files must go to IAG's corporate office. Regional Human Resources Managers and Regional Directors can access personnel files via computer only for employees in their own Regions. Only Hunter, Brooks and Bennett have centralized access to all employees' files across all Regions and within all programs. All hourly employees punch-in their time into a telephone system (that functions much like a time clock) at the various sites where they work.

Some of IAG's training is centralized and some is regional. All management position training is conducted at the corporate office, as is all DSP training. All employees, regardless of position, receive CPR and first aid training, abuse/neglect training, and administration of medication training. Within each Region, employees meet with their supervisors once per month at the locations where they work (i.e. the DSPs meet on a monthly basis with their individual House Managers at their assigned CILA home or TLP home). The Regional Directors meet monthly with the Executive Director at the corporate office. Brooks testified that he conducts a quarterly clinical review at each regional office.

In the North Region, there are about 80-100 DSPs and 13 House Managers in the CILA Program, 15-20 DSPs and 3 House Managers in the TLP, and 28-29 Developmental Trainers, 2 Developmental Instructors and 1 Developmental Transporter in the DT Program. In the Chicago South Central Region, there are about 5-6 DSPs and 1 House Manager in the CILA Program, and 50 DSPs and 7 House Managers in the TLP. In the South Region, there are about 80-100 DSPs and 13-14 House Managers in the CILA Program, 15 DSPs and 3 House Managers in the TLP, and 10 Developmental Trainers and 1 Developmental Transporter in the DT Program. In the West Region, there are about 65-70 DSPs and 9 House Managers in the CILA Program, and 10

Developmental Trainers and 1 Developmental Transporter in the DT Program. There is currently no TLP in the West Region. In addition, there are 10-15 DSPs who are a part of IAG's HBS Program, and 16-18 Clinical Mentors in IAG's Post-Adoption Program.

The DSPs, Developmental Trainers, and Developmental Transporters earn between \$8.50 and \$9.50 per hour. The House Managers and Clinical Mentors earn between \$10 to \$11 per hour. The Developmental Instructors earn between \$9.50 and \$10.50 per hour. Of these classifications, only Clinical Mentors must have a Bachelor's Degree or 5 or so years of experience in the field. DSP training, required for all of the petitioned-for classifications, is not required for the Clinical Mentors.

The record evidence shows that there is some interchange among the different employee classifications. Infrequently, there are DSPs with additional education and/or years of experience who perform as Clinical Mentors, and there are Clinical Mentors who pick up work as DSPs in the TLP and CILA Programs. More frequently, DSPs work in the DT and in the CILA Programs. There is also some record evidence that employees have on occasion covered shifts for one another across Regions. Hunter testified that DSPs from the TLP have crossed from Region to Region, and that a DSP from the West Region has covered a shift for a DSP in the South Region. However, the record did not disclose the frequency of those transfers, or whether they were occurring at the present time.

#### **IV. Analysis**

##### **A. Scope**

There is nothing in the Act that requires the unit for bargaining be the only appropriate unit or the most appropriate unit – the Act only requires that the unit for bargaining be “appropriate” so as to assure employees the fullest freedom in exercising the rights guaranteed by the Act. *Overnite Transportation Co.* 322 NLRB 723 (1996); *Brand Precision Services*, 313 NLRB 657 (1994); *Phoenix Resort Corp.*, 308 NLRB 826 (1992). Moreover, the Board's procedure for determining an appropriate unit under Section 9(b) is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. *Boeing Co.*, 337 NLRB 152 (2001). The burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, 290 NLRB 150, 151 (1988). Thus, in the instant matter, the burden is on the Employer to demonstrate that the unit sought by the Petitioner is inappropriate.

In determining the appropriateness of a multi-facility unit versus a single facility unit, the Board examines several factors, including: centralized control over daily operations and labor relations; local autonomy of operations; similarity of employee work skills, functions and working conditions; degree of employee interchange; distance between the locations; and bargaining history, if any. *Jerry's Chevrolet Cadillac*, 344 NLRB No. 87 (2005); *Alamo Rent-A-Car*, 330 NLRB 897 (2000).



First, I find that the Employer has shown that the petitioned-for unit of three out of four Regions is an inappropriate unit in scope. Second, I find that the Petitioner's alternatively proposed single Region units are appropriate.

The Employer exhibits a high degree of administrative centralization of its corporate and labor relations policies. Corporate headquarters is responsible for formulating the Employer's budget and setting pay scales agency-wide. The Employer offers the same benefits to hourly employees in all of its Regions. Much of the training is conducted centrally, both for hourly employees and for supervisors. However, on a day-to-day basis, each Region operates separately and autonomously. Individual Regional Directors and Human Resources Managers hire employees, discipline employees, assign overtime to their employees, and control the scheduling within their respective Regions.

It is undisputed that employee work skills, functions, training and working conditions do not vary from Region to Region. The petitioner proffered no evidence that employees in the West Region perform different or additional duties than their counterparts in the North, South and Chicago South Central Regions. The DSPs and House Managers, regardless of Region, care for clients in the CILA homes or in their families' homes. Similarly, the Developmental Trainers, Developmental Instructors, and DT Transporters perform the same functions in the West Region as do their counterparts in the other three Regions.

There is some geographic separation among the four Regions, and the Petitioner argues that the Employer's North, South and South Central Regions are all part of the "extended Chicago metropolitan area." However, the record evidence demonstrates that the CILA home in the South Region is approximately 166 miles away from the South Regional office and 175 miles from IAG's corporate office, while the West Regional office is located approximately 145 miles from IAG's corporate office.

Finally, there is no bargaining history between the parties.

The North, South and Chicago South Central Regions do not share any identifiable degree of functional integration separate from the West Region such that a unit of only three out of the four Regions would be appropriate. The three petitioned-for Regions do not offer separate program services from what is offered in the West Region. The three petitioned-for Regions do not share common supervisors and managers separate and apart from the West Region. To the contrary, each Region has its own Regional Director and its own Human Resources Manager. It is undisputed that the nature of the employees' skills and functions in the three petitioned-for Regions do not differ from those of the employees in the West Region. The employees in the West Region are subject to the same policies and rules as those employees in the three petitioned-for Regions. The employees in the West Region receive the same pay and benefits as those in the North, South and Chicago South Central Regions. In short, there is a complete absence of a uniquely cohesive relationship among the three petitioned-for Regions. Based on this overwhelming evidence, it would be inappropriate to carve out one Region from the remaining three Regions in this case, and I decline to do so. I therefore find that the employees in the North, South and Chicago South Central Regions do not constitute an appropriate unit.

It is well established that a single facility unit is presumptively appropriate. *North Hills Office Services*, 342 NLRB 437 (2004). The burden is on the party seeking a more comprehensive unit to rebut this single facility presumption by showing that the employees at the single facility have been so integrated with the employees at another facility as to cause their single facility unit to lose its separate identity. *Trane*, 339 NLRB 866 (2003). So when a union seeks a presumptively appropriate unit, like a single facility unit, it is the employer's burden to rebut the presumption. *J&L Plate*, 310 NLRB 429 (1993). In order to rebut the presumption, the Board relies on the factors enumerated above (i.e. centralized management and labor relations, local autonomy, employee working conditions, employee interchange, and geography). *Jerry's Chevrolet Cadillac*, supra; *Alamo Rent-A-Car*, supra.

Based on the entire record in this matter, I find that the appropriateness of separate single facility units has not been rebutted. Each Region maintains its separate identity based upon separate day-to-day management and supervision of each Region's operations, geographical separation, and minimal interchange or interaction of employees among the four Regions. In short, each Region is a capable and operational stand-alone facility from the other facilities, regardless of the ultimate oversight provided by the corporate office.

While, as the Employer argues, there are factors in the record which would support a finding that a combined unit of all four facilities would constitute an appropriate unit, this does not negate the presumptive appropriateness of single facility units. The record shows that the employees in all four Regions are governed by the same handbook policies, receive the same benefits, and work in the same job classifications. However, the fact that a multi-facility unit may also be appropriate does not support a finding that the single facility units are not appropriate. Here, I have found that the individual Regional Directors and Human Resource Directors hire and discipline their own employees, assign overtime and set employee work schedules. Employees do not interchange among the Regions, some of which are over 100 miles apart. Therefore, I find that the single separate units of employees employed in the North Region, the South Region, the Chicago South Central Region and the West Region are individual appropriate units.

Having determined that four separate regional units are appropriate, I now turn to unit composition and the two disputed classifications.

## **B. Composition**

As delineated above, there is nothing in the Act that requires the unit for bargaining be the only appropriate unit or the most appropriate unit – the Act only requires that the unit for bargaining be “appropriate” so as to assure employees the fullest freedom in exercising the rights guaranteed by the Act. *Overnite Transportation Co.*, supra. If the petitioned-for unit is appropriate, then the inquiry into the appropriate unit ends. *Boeing Co.*, supra. Once again, the burden is on the party challenging the unit to show that the petitioned-for bargaining unit is inappropriate; if the unit sought by the petitioning labor organization is appropriate, the inquiry ends. *P.J. Dick Contracting, Inc.*, supra. Thus, in the instant matter, the burden is on the Employer to demonstrate that the composition of the unit sought by the Petitioner is inappropriate.

The Board examines the community of interests among classifications of employees in order to determine the appropriateness of a unit. In doing so, the Board scrutinizes factors such as: the employees' wages, hours, benefits, and working conditions; commonality of supervision; degree of common skills and functions; frequency of contact and interchange; and functional integration of the employer's operations. *Publix Super Markets, Inc.* 343 NLRB No. 109 (2004)

The Employer correctly points out that the DSPs in the HBS Program and the Clinical Mentors in the Post-Adoption Program share common wages and benefits with the petitioned-for employees. They are all paid between \$8.50 and \$11.00 per hour. They all receive the same benefits and they are subject to the same company policies. In addition, they share common skills and functions. However, and though the Employer minimizes the issue<sup>8</sup>, the working conditions of the disputed employees are very different from those of the petitioned-for employees. The petitioned-for employees report to fixed locations within their individual Regions on a daily basis and work with the same clients each day. For instance, the CILA DSPs report to the same CILA home every day for an 8-hour shift and work with the same clients who reside in that CILA home day after day. On the other hand, the disputed employees travel from Region to Region to see clients in their families' homes. They do not have set 8-hour schedules. They do not work with the same clients on a daily basis. For instance, the HBS DSPs travel throughout the state (across all four Regions as needed) and meet with clients in their families homes for a certain period of time which may change day to day or client to client.

Moreover, the disputed employees do not share any common front-line supervision with the petitioned-for employees. The petitioned-for employees report to their geographic Regional Directors. The HBS DSPs report to two Field Coordinators, who in turn report to a Qualified Mental Health Professional and to COO Brooks. The Clinical Mentors report to the Director of Behavioral Health Services in the corporate office. In addition, there is minimal contact or interchange between the disputed employees and the petitioned-for employees. The disputed employees work one-on-one with their clients in the families' home. The petitioned-for employees are staffed together in a CILA or TLP home or at a DT site. When a DSP in CILA or TLP brings a client to a DT site, the DT employees have daily contact with the CILA and/or TLP employees. The Clinical Mentors and the HBS DSPs are isolated and do not have daily contact with any of the petitioned-for employees. Furthermore, there is only limited interchange between the petitioned-for classifications and the disputed classifications. There is no record evidence showing when, if ever, the HBS DSPs interchange with any of the petitioned-for classifications. Regarding the Clinical Mentors, Hunter testified that they have picked up shifts as DSPs. However, this interchange does not occur on a regular basis.

The evidence establishes that the Employer's CILA, TLP and DT Programs are grouped together and operated by Region. The Employer's HBS and Post-Adoption Programs (and TBI Program, which was amended out of this proceeding) are grouped together and operated by program. This is a critical difference that I cannot overlook. Therefore, the disputed employees are not functionally integrated with any of the Regions. Moreover, even if, *arguendo*, the

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<sup>8</sup> The Employer asserts that it is insignificant where the DSPs and/or Clinical Mentors perform their duties since those duties are the same as those assigned to the petitioned-for employees. However, I find, as discussed in greater detail *infra*, that this difference in where the employees perform their assigned work is critical.

disputed employees were found to be functionally integrated with all four Regions, there is no evidence that they are integrated with any one particular Region. In other words, the disputed employees do not share any special relationship with the petitioned-for employees in the North Region any more than they do with the employees in the South Region, the Chicago South Central Region or the West Region. There simply is no one geographic unit in which to place the HBS DSPs or the Clinical Mentors. Thus, I find that the HBS DSPs and the Clinical Mentors do not share a community of interests with any one of the four regional units, and I find that the Employer has not met its burden to prove otherwise. Therefore, the HBS DSPs and the Clinical Mentors are excluded from each of the four regional units directed herein.<sup>9</sup>

#### **V. Direction of Election**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by American Federation of State, County and Municipal Employees Council 31, AFL-CIO.

#### **VI. Notices of Election**

Please be advised that the Board has adopted a rule requiring election notices to be posted by the Employer at least three working days prior to an election. If the Employer has not received the notice of election at least five working days prior to the election date, please contact the Board Agent assigned to the case or the election clerk.

A party shall be estopped from objecting to the non-posting of notices if it is responsible for the non-posting. An employer shall be deemed to have received copies of the election notices unless it

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<sup>9</sup> As I have directed an election in a unit larger than that sought by the Petitioner, the Petitioner is hereby given 14 days to submit the additional showing of interest. These 14 days will be counted from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision. In the alternative, the Petitioner may withdraw its petition without prejudice upon written notice to me within 10 days from the date of this decision or, if applicable, from the date the Board denies any request for review of the unit scope findings in this decision.

notifies the Regional Office at least five working days prior to 12:01a.m. of the day of the election that it has not received the notices. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure of the Employer to comply with these posting rules shall be grounds for setting aside the election whenever proper objections are filed.

## **VII. List of Voters**

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759 (1969). Accordingly, it is directed that 2 copies of an eligibility list for each unit containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359, fn. 17 (1994). This list may initially be used by me to assist in determining an adequate showing of interest in each unit. I shall, in turn, make this list available to all parties to the election only after I shall have determined that an adequate showing of interest among the employees in each unit found appropriate has been established. In order to be timely filed, such list must be received in Region 13's Office, 209 South LaSalle Street, 9<sup>th</sup> Floor, Chicago, Illinois 60604, on or before **Monday, August 28, 2006**. No extension of time to file this list will be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

## **VIII. Right to Request Review**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street NW, Washington, DC 20005-3419. This request must be received by the Board in Washington by **Tuesday, September 5, 2006**.

DATED at Chicago, Illinois this 21<sup>st</sup> day of August, 2006.

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Gail R. Moran  
Acting Regional Director  
National Labor Relations Board  
Region 13  
209 South LaSalle Street, 9<sup>th</sup> Floor  
Chicago, Illinois 60604

CATS — Unit – Single vs. Multi-Facility; Unit – Other Scope/Definition; Voter Eligibility -  
Other  
420-0150; 440-3300; 460-2500